Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada),

Applicant,

and

United Airlines, Inc.,

Employer.

Board File: 29315-C
Neutral Citation: 2013 CIRB **686**
June 21, 2013

The Canada Industrial Relations Board (Board) composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. John Bowman and Robert Monette, Members, considered the above-noted application.

Counsel of Record

Mr. Anthony F. Dale, for the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada);

Mr. Douglas G. Gilbert, for United Airlines, Inc.

These reasons for decision were written by Mr. Graham J. Clarke, Vice-Chairperson.

I. Nature of the Application

[1] Section 16.1 of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine this matter without an oral hearing.

[2] As described in *United Airlines, Inc., Continental Airlines, Inc. and United Continental Holdings, Inc.*, 2013 CIRB 671 (*United 671*), United Airlines, Inc. (United) and Continental Airlines, Inc. (Continental), merged in October, 2010. Their operations were integrated so that they functioned as a single airline.

[3] At the Lester B. Pearson International Airport in Toronto, the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (CAW) represented a bargaining unit at United. The International Association of Machinists and Aerospace Workers (IAMAW) represented a bargaining unit at Continental.

[4] The parties did not contest that the transaction constituted a sale of business. Neither was there any dispute that the Board, pursuant to section 45 of the *Code*, needed to review the two existing Toronto-based bargaining units.

[5] The Board issued an interim bargaining unit description as a consequence of the sale of business (Order no. 10389-U).

[6] The Board in *United 671*, *supra*, ordered a run off representation vote to determine whether the IAMAW or the CAW would represent the merged bargaining unit. The CAW won that representation vote.

[7] After the CAW and United could not agree, the Board asked them to provide their submissions for the final bargaining unit description.

[8] On June 20, 2013, the Board issued its final bargaining unit description after considering the parties' submissions (Order no. 10447-U).

[9] This decision resolves the issues arising from the fact that the CAW and IAMAW collective agreements currently apply to the merged bargaining unit. The parties could not resolve the issues themselves and provided their legal submissions to the Board.

II. Statutory Provisions

[10] Sections 18.1(2) to (4) read as follows:

> 18.1(2) If the Board reviews, pursuant to subsection (1) or section 35 or 45, the structure of the bargaining units, the Board
>
> (*a*) must allow the parties to come to an agreement, within a period that the Board considers reasonable, with respect to the determination of bargaining units and any questions arising from the review; and
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> (*b*) may make any orders it considers appropriate to implement any agreement.
>
> (3) If the Board is of the opinion that the agreement reached by the parties would not lead to the creation of units appropriate for collective bargaining or **if the parties do not agree on certain issues within the period that the Board considers reasonable, the Board determines any question that arises and makes any orders it considers appropriate in the circumstances.**
>
> **(4) For the purposes of subsection (3), the Board may**
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> **(*a*) determine which trade union shall be the bargaining agent for the employees in each bargaining unit that results from the review;**
>
> **(*b*) amend any certification order or description of a bargaining unit contained in any collective agreement;**
>
> (*c*) if more than one collective agreement applies to employees in a bargaining unit, decide which collective agreement is in force;
>
> **(*d*) amend, to the extent that the Board considers necessary, the provisions of collective agreements respecting expiry dates or seniority rights, or amend other such provisions;**
>
> (*e*) if the conditions of paragraphs 89(1)(*a*) to (*d*) have been met with respect to some of the employees in a bargaining unit, decide which terms and conditions of employment apply to those employees until the time that a collective agreement becomes applicable to the unit or the conditions of those paragraphs are met with respect to the unit; and
>
> **(*f*) authorize a party to a collective agreement to give notice to bargain collectively.**

(emphasis added)

[11] Following a sale of business, and assuming the Board decides to review the bargaining unit structure, sections 18.1(2) to (4) of the *Code* provide a process for resolving certain consequential issues. This allowed the Board in this case to hold a run off representation vote and to finalize the description of the bargaining unit at United.

[12] Since two collective agreements apply to the recently merged bargaining unit, section 18.1(4) allows the Board to remedy that exceptional situation. For example, section 18.1(4)(*d*) allows the Board to change the expiry dates for collective agreements.

III. Analysis and Decision

[13] The CAW suggested that its existing collective agreement with United should apply to all former Continental employees. In the alternative, the CAW suggested extending the Continental collective agreement for a set period of time before allowing the CAW to give United a notice to bargain.

[14] United argued that imposing the CAW's collective agreement on Continental's former employees would lead to both windfalls for some employees and unwarranted losses for others. United suggested that the Board establish a common expiry date of March 31, 2014 for both collective agreements. Either party would then be able to give notice to bargain in accordance with the *Code*.

[15] In the alternative, United suggested the Board defer deciding the issue for a three-month period ending July 31, 2013.

[16] The Board has considered the parties' positions. A sale of business can give rise to complicated, and potentially unhealthy, labour relations issues. The definition of a bargaining unit in the *Code* contemplates only one collective agreement applying to it. Section 18.1 foresees that a sale of business may leave an employer temporarily with the challenge of applying two different collective agreements for employees in a single merged unit.

[17] Similarly, that same sale of business may inconvenience a trade union by forcing it to apply not only the collective agreement it negotiated, but also one negotiated by the other trade union which had lost the run off representation vote.

[18] The CAW did not persuade the Board that all of Continental's former employees should now be governed by its collective agreement. While that solution is available, and has the advantage of being quick, it eliminates collective bargaining as the means to determine the terms and conditions of employment for Continental's former employees. The Board prefers a resolution which promotes collective bargaining.

[19] This is especially the case where the bargaining units at United and Continental in Toronto had been of almost equal size.

[20] The Board was also not convinced in the circumstances of this case that allowing the status quo to linger would promote sound labour relations. Rather, the sooner the parties can start focusing on the terms and conditions of employment for all the employees in the bargaining unit, the better.

[21] As a result, pursuant to section 18.1(4)(*e*) of the *Code*, the Board has decided that both the CAW and the IAMAW collective agreements will now have the same expiry date of Friday, September 6, 2013. This short delay allows the parties to prepare over the summer for the negotiation of a new collective agreement applicable to all employees in the bargaining unit.

[22] This is a unanimous decision of the Board.

Graham J. Clarke
Vice-Chairperson

John Bowman
Member

Robert Monette
Member